

FIRST JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

STATE OF NEW MEXICO, *ex rel.*
GARY K. KING, Attorney General,

Plaintiff,

v.

No. D0101-CV-2009-01916

B&B INVESTMENT GROUP, INC.
d/b/a CASH LOANS NOW,
AMERICAN CASH LOANS, LLC
d/b/a AMERICAN CASH LOANS

Defendants.

**FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO
UNFAIR PRACTICES ACT, FOR RESTITUTION AND CIVIL PENALTIES,
AND FOR DECLARATORY, PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

COMES NOW the State of New Mexico, ex rel. GARY K. KING, Attorney General, by Assistant Attorneys General Karen J. Meyers and John D. Thompson, and alleges that:

INTRODUCTION

1. This is a suit seeking injunctive, declaratory and equitable relief, and restitution and civil penalties pursuant to the common law of New Mexico and the New Mexico Unfair Practices Act, NMSA 1978 § 57-12-1 *et seq.* This action seeks to redress on behalf of the public in New Mexico lending practices by Defendants B&B Investment Group, Inc. d/b/a Cash Loans Now in Farmington, New Mexico and American Cash Loans, LLC d/b/a American Cash Loans in Farmington, Albuquerque, and Hobbs, New

ENDORSED
First Judicial District Court
NOV 20 2009 CC
Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

Mexico for loans made at an interest rate in excess of 1000% per annum, which loans are unconscionable and in violation of New Mexico law.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is the duly elected Attorney General for the State of New Mexico. He is authorized to bring this action pursuant to NMSA 1978, § 57-12-8(A) (1967), and NMSA 1978, § 8-5-2(B) (1933). Plaintiff has determined that the matters set forth in this Complaint are in the interest of the State of New Mexico.

3. Defendant B&B Investment Group, Inc. is a foreign corporation doing business as Cash Loans Now in Farmington, New Mexico. Defendant B&B Investment Group, Inc. maintains its principal place of business in New Mexico at 425 E. Main Street, Farmington, New Mexico 87401.

4. Defendant American Cash Loans, LLC is a domestic limited liability company doing business as American Cash Loans at 738 W. Main Street, Farmington, New Mexico 87401; 2828 Carlisle Blvd. NE #E, Albuquerque, New Mexico 87110; and 931 E. Bender, Hobbs, New Mexico 88240.

5. Defendants may be served with process through their counsel of record. Defendants are also registered and licensed under the New Mexico Small Loan Act of 1955, NMSA 1978, Sections 58-15-1 *et seq.*

6. Upon information and belief, Defendant B&B Investment Group, Inc. is not registered to do business in this State with the New Mexico Public Regulations Commission.

7. Upon information and belief, Defendants have offered and/or originated the unconscionable loan products at issue in this lawsuit to one or more residents of San

Juan, Bernalillo, and Lea Counties, and, upon information and belief, will continue to offer and/or originate such loan products in these counties and elsewhere in New Mexico pending the results of this litigation.

8. For purposes of the general venue statute in New Mexico, Plaintiff resides in Santa Fe County. Venue in this judicial district is therefore proper pursuant to NMSA 1978, § 38-3-1(A).

9. At all relevant times the Defendants have been engaged in trade or commerce in New Mexico within the meaning NMSA 1978, § 57-12-2(C).

DEFENDANTS' BUSINESS PRACTICES

10. Defendants are engaged in the practice of originating and servicing high-cost installment loans throughout the State of New Mexico. As set forth in greater detail herein, these loans share a pair of common features that make them especially harmful to New Mexico consumer welfare: (1) interest rates in excess of 1100% per annum; and (2) prolonged amortization periods which result in borrowers making cumulative payments that exceed the principal amount financed by as much as eleven times.

11. Upon information and belief, Defendants routinely originate these high-cost installment loans without inquiring into the borrowers' reasonable ability to repay the loans under the proffered terms. The exorbitant interest rates offered in these loans are adhesive elements of a "take-it-or-leave-it" bargain.

12. The Office of the New Mexico Attorney General has received multiple complaints against the named Defendants. Defendant B&B Investment Group, Inc. does business in Farmington, New Mexico as Cash Loans Now. Defendant American Cash

Loans, LLC does business as American Cash Loans in Farmington, Albuquerque, and Hobbs, New Mexico.

13. While the precise nature of the affiliation between B&B Investment Group, Inc. and American Cash Loans, LLC is not yet known, the two entities share the same principal, James Bartlett. The lending practices of the two entities are governed by the same policies and procedures. The American Cash Loans website at www.americancashloansnewmexico.com lists the Farmington, New Mexico Cash Loans Now storefront in its "Store Locator" menu. Finally, the loan products offered at each entity's storefronts operated by each of the Defendants share strikingly similar, unconscionable terms. To wit:

Oscar Wellito's loan with Cash Loans Now in Farmington, New Mexico

14. On December 2, 2008, New Mexico resident Oscar Wellito took out a \$100 loan at Defendant B&B Investment Group, Inc.'s Farmington storefront to cover emergency expenses. A copy of the "Installment Loan Agreement & Truth-In-Lending Act Disclosure" (hereinafter "Wellito Agreement" or "Agreement") is attached hereto as Exhibit A.

15. The Wellito Agreement carries an interest rate of ***1147.14 percent per annum***. The Agreement calls for the \$100 loan to be repaid in twenty-six bi-weekly installments of \$40.16 starting on December 12, 2008, with a final "balloon" payment of \$55.34 due on December 11, 2009. All told, the Agreement calls for Mr. Wellito to pay ***a total of \$1,099.71 over a one-year period on a loan of \$100.***

16. The loan is secured by a "Voluntary ACH Agreement." This kind of agreement authorizes the installments due on the loan to be withdrawn from a borrower's

debit banking account on the date each installment comes due. The Wellito Agreement provides for a \$25 penalty “if the ACH or debit card with which you make your payment is dishonored.” Thus, the Agreement calls for a penalty representing 62.5% of each installment payment due and 25% of the total amount of principal financed.

17. In addition to an interest rate that exceeds 1000% per annum and the disproportionate penalty for a dishonored debit authorization, the Wellito Agreement also contains an acceleration clause. That clause reads: “If you fail to make any of the scheduled payments under the terms of this Agreement, or are otherwise in default as defined below, Lender may declare the entire balance outstanding and owed under the Agreement *as immediately due without notice to you.*” (emphasis added)

18. As such, the Agreement contains a trio of substantively unconscionable provisions, the presence of which give rise to a clear inference of procedural unconscionability in its formation. The Agreement contains (1) an exorbitant and grossly unfair APR; (2) a disproportionate penalty for a dishonored debit authorization; and (3) a provision calling for acceleration of the total amount financed for even a *de minimis* breach of the installment payment schedule without any notice to the borrower.

19. Defendant has knowingly and willfully structured the Wellito Agreement and, upon information and belief, other loan products that it offers to and originates with New Mexico consumers, in violation of the New Mexico Unfair Practices Act’s prohibition against the use of unconscionable trade practices in this State. NMSA 1978, § 57-12-2(E).

20. To date, Mr. Wellito has made four separate \$40.16 installment payments under the terms of his Agreement with Defendant. The customer receipt for the first

installment, paid on December 12, 2008, notes that of the \$40.16 received, \$8.73 was applied to the principal balance of the loan, while \$31.43 was applied to payment of interest. The receipt notes that Mr. Wellito's outstanding loan balance is \$91.27 as of the date he paid the first installment. The customer receipt for the December 12, 2008 payment is attached hereto as Exhibit B.

21. The customer receipt for the second installment, paid on December 27, 2008, notes that of the \$40.16 received, \$0.00 was applied to the principal balance of the loan, while the entirety of the \$40.16 received was applied to the payment of interest. The receipt notes that Mr. Wellito's outstanding loan balance is \$94.14, of which \$2.87 is unpaid interest due, as of the date he paid the second installment. The customer receipt for the December 27, 2008 payment is attached hereto as Exhibit C.

22. The customer receipt for the third installment, paid on January 12, 2009, notes that of the \$40.16 received, \$0.00 was applied to the principal balance of the loan, while the entirety of the \$40.16 received was applied to the payment of interest. The receipt notes that Mr. Wellito's outstanding loan balance is \$ 99.98, of which \$8.61 is unpaid interest due, as of the date he paid the third installment. The customer receipt for the January 12, 2009 payment is attached hereto as Exhibit D.

23. The customer receipt for the fourth installment, paid on January 26, 2009, notes that of the \$40.16 received, \$0.00 was applied to the principal balance of the loan, while the entirety of the \$40.16 received was applied to the payment of interest. The receipt notes that Mr. Wellito's outstanding loan balance is \$99.98, of which \$8.61 is unpaid interest due, as of the date he paid the fourth installment. The customer receipt for the January 26, 2009 payment is attached hereto as Exhibit E.

24. After making four installment payments of \$40.16, totaling \$160.64, Mr. Wellito has managed to pay down a total of \$0.02 on the principal balance of his \$100 loan. Mr. Wellito stopped making payments on the loan after paying the fourth installment due on January 26, 2009. When he approached the people operating the Cash Loans Now storefront in Farmington, he was told that his payoff amount was then more than \$1000 and that he would need to pay off the loan in full or face collection efforts. Mr. Wellito then filed a complaint with the Office of the New Mexico Attorney General.

25. By reason of the foregoing actions, Defendant has caused and will, unless enjoined, continue to cause injury, loss and damage to the State of New Mexico and consumers located in this State.

26. Defendant American Cash Loans, LLC also operates small lending businesses and, upon information and belief, offers, originates, and services high-cost installment loan products at each of its locations in Farmington, Albuquerque, and Hobbs, New Mexico.

27. Defendant American Cash Loans, LLC offers, originates, and services these high-cost installment loans under the auspices of the same policies, procedures, and other organizational documents that govern the lending practices of Defendant B&B Investment Group, Inc.

**COUNT I:
COMMON-LAW UNCONSCIONABILITY**

28. The allegations set forth above are incorporated herein by reference.

29. A contract is substantively unconscionable and unenforceable when the content of the contractual terms is illegal, contrary to public policy, or grossly unfair. The Wellito Agreement is substantively unconscionable insofar as it requires a

cumulative payment of \$1099.71 on a \$100 loan. A loan carrying an 1147.14% APR, which is amortized over 26 bi-weekly payments and requires a final balloon payment on the maturity date is grossly unfair and contrary to New Mexico public policy.

30. The Wellito Agreement is procedurally unconscionable because (1) the Agreement was prepared entirely by Defendant for the acceptance by Mr. Wellito on a “take-it-or-leave-it” basis and without an opportunity for bargaining; and (2) Defendant relied on its superior bargaining power vis-à-vis Mr. Wellito to impose an oppressive and unconscionable rate of interest in the loan product it offered Mr. Wellito.

31. For all of the foregoing reasons, this Court should find the Wellito Agreement and all other loan agreements the Defendants have originated which contain the same or similar terms unconscionable as a matter of New Mexico common law.

**COUNT II:
STATUTORY UNCONSCIONABILITY UNDER THE
NEW MEXICO UNFAIR PRACTICES ACT**

32. The allegations set forth above are incorporated herein by reference.

33. The New Mexico Unfair Practices Act defines an “unconscionable trade practice” as “an act or practice in connection with...the extension of credit...which to a person’s detriment: (1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.” NMSA 1978, § 57-12-2(E)(1)-(2). The Act declares all such unconscionable trade practices to be unlawful. NMSA 1978, § 57-12-3.

34. Defendant B&B Investment Group, Inc.’s practice of originating the Wellito Agreement and, upon information and belief, each of the Defendants’ ongoing

practice of originating the same or similar loan agreements carrying interest rates in excess of 1000% per annum with consumers in this State, constitutes a knowing and willful violation of the prohibition against unconscionable trade practices in the Unfair Practices Act.

35. For all of the foregoing reasons, this Court should find the Wellito Agreement and all other loan agreements the Defendants have originated which offer the same or similar terms unconscionable under the New Mexico Unfair Practices Act.

36. Further, this Court should order Defendants to pay restitution to all consumers who have been harmed by Defendants' unconscionable trade practices pursuant to NMSA 1978, § 57-12-8(B).

**COUNT III:
REQUEST FOR DECLARATORY RELIEF**

37. The allegations set forth above are incorporated herein by reference.

38. Plaintiff requests that this Court declare the Wellito Agreement and all other loan agreements sharing the same or similar terms unconscionable and unenforceable as a matter of New Mexico law.

**COUNT IV:
APPLICATION FOR PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF**

39. The allegations set forth above are incorporated herein by reference.

40. Defendants have engaged in a pattern and practice of exploiting New Mexico consumers through the origination of unconscionable small loan agreements. New Mexico consumers have suffered, and will continue to suffer, irreparable harm as a direct and proximate result of Defendants' wrongful acts if an injunction does not issue in this lawsuit. Further, there is no adequate remedy at law, as Defendants' violations of the

Unfair Practices Act are present and continuing. Any harm resulting from the issuance of an injunction will be outweighed by the benefit to the public, and there is a substantial likelihood that Plaintiff will prevail at a trial on the merits of its claim

**COUNT V:
EQUITABLE RECOVERY UNDER PRINCIPLES OF
RESTITUTION AND UNJUST ENRICHMENT**

41. The allegations set forth above are incorporated herein by reference.

42. As a direct and proximate result of Defendants' origination of the Wellito Agreement and other loan agreements sharing the same or similar provisions, Defendants have been unjustly enriched inasmuch as it has received installment payments which, cumulatively, exceed more than 1000% of the principal amount financed, along with monies paid to satisfy grossly disproportionate penalties for dishonored debit authorizations.

43. This Court should find that Defendants have been unjustly enriched and order Defendants to disgorge all monies collected under the terms of the Wellito Agreement and any other agreements it originated with New Mexico consumers which share the same or similar terms.

WHEREFORE, Plaintiff respectfully prays that the Court:

A. Declare the terms of the Wellito Agreement structurally unfair and unconscionable as a matter of New Mexico common law and under Section 57-12-2(E) of the New Mexico Unfair Practices Act.

B. Declare all of Defendants' loan products that share the same or similar terms structurally unfair and unconscionable as a matter of New Mexico common law and under Section 57-12-2(E) of the New Mexico Unfair Practices Act.

C. Declare all loan agreements encompassed by Sections A. and B. above to be void and unenforceable.

D. Enter preliminary and permanent injunctive relief as follows:

1. Requiring Defendants to cease seeking future payments from Mr. Wellito under the terms of the Wellito Agreement and from seeking future payments from any borrowers who have loan agreements with Defendants sharing the same or similar terms; and
2. Requiring Defendants to cease originating any loans that share the same or similar terms as the Wellito Agreement.

E. Order Defendants to pay restitution to all consumers determined during the litigation to have been injured by Defendants' unconscionable trade practices;

F. Order Defendants to cease all collection efforts on any loans that it has originated in New Mexico;

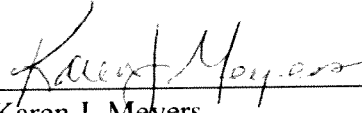
G. Order Defendants to pay a civil penalty of up to \$5,000 for each violation of the Unfair Practices Act determined to have been willful;

H. Order Defendants to pay the taxable costs incurred by Plaintiff in prosecuting this action;

I. Grant such other and further relief as it may deem just and proper.

Respectfully submitted,

GARY K. KING
Attorney General

A handwritten signature in cursive script, appearing to read "Karen J. Meyers", is written over a horizontal line.

Karen J. Meyers
John D. Thompson
Assistant Attorneys General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-3883 direct line
(505) 827-6685